

SUPPLIER GENERAL TERMS AND CONDITIONS

For the purchase of goods by and the rendering of services to **AGÊNCIA DE PROMOÇÃO DE EXPORTAÇÕES DO BRASIL (Apex-Brasil)** [Brazilian Trade and Investment Promotion Agency], hereinafter referred to only as "**Apex-Brasil**", an Independent Social Service, instituted in accordance with Law nº 10.668 and Decree nº 4584, of 2003, with its head offices at SBN, Quadra 2, Lote 11, Edifício Gabriel Otávio Estevão de Oliveira, Térreo, Brasília (DF), ZIP CODE 70040-020, Brazil.

1. DEFINITIONS

- 1.1. "**Supplier**" means the party selling the applicable products or services to **Apex-Brasil**.
- 1.2. "**Parties**" means **Apex-Brasil** and **Supplier**.
- 1.3. "**Agreement**" consist of the Request for Proposal (RFP), the Presented Proposal, which are incorporated herein, independent of its transcription and whose content the **Parties** declare to have full knowledge of, and these Terms and Conditions.
- 1.4. "**Confidential Information**" means any information in respect of **Apex-Brasil's** business and financing including, but not limited to, any ideas, marketing plans and artwork, business methods, finance, prices, plans, market opportunities, product information, design rights, customer information, employee details, trade secrets, computer systems and software know-how on any medium and other matters connected with the Goods or Services provided or obtained by **Apex-Brasil**, but does not include: (i) information or knowledge which is already publicly known or which subsequently becomes generally publicly known other than as a direct or indirect result of a breach of this Agreement; or (ii) information or knowledge which is required to be disclosed by law.
- 1.5. "**Force Majeure**" means an occurrence beyond the control and without the fault or negligence of the party affected and which by exercise or reasonable diligence, the said party is unable to prevent or provide against. Without limiting the generality of the foregoing, force majeure occurrences shall include: acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, acts of foreign combatants, terrorists acts, military or other usurped political power or confiscation, nationalization, government sanction or embargo, labor disputes of third parties to this contract, or the prolonged failure of electricity or other vital utility service.

2. ENGLISH/SPANISH LANGUAGES

- 2.1. The parties agree that all contractual documents, correspondence, invoices, notices, and other documents related to the purchase, shall be in American English or Spanish.
- 2.2. Any necessary conversations shall be in English or Spanish.
- 2.3. **Apex-Brasil** shall determine whether measurements will be in the English or metric system or a combination of the two. **Supplier** shall not convert measurements that **Apex-Brasil** has stated in the English system into the metric system in documents furnished to **Apex-Brasil**.

3. ACCEPTANCE

- 3.1. **Supplier** agrees to perform the services ("Services") or provide the goods or service deliverables (collectively referred to as "Goods"), described in the **Agreement** in accordance with the present Terms and Conditions.
- 3.2. In the event **Supplier** gives a quotation and starts the performance of the Services based on **Apex-Brasil's RFP**, whereas **Apex-Brasil** has not yet written accepted **Supplier's Proposal**, the performance of the Services shall be solely **Supplier's** responsibility and **Apex-Brasil** shall not be liable in any way until it has written accepted **Supplier's Proposal**.
- 3.3. Any terms or conditions contained in an acknowledgment, invoice or other communication of **Supplier**, which are inconsistent with these Terms and Conditions will not be accepted.
- 3.4. These Terms and Conditions prevail over those related to the **RFP** and **Proposal**, in case of divergence or conflicting provisions.
- 3.5. **Supplier** shall not perform any work that has not been demanded in writing form by **Apex-Brasil**, and **Apex-Brasil** shall not be required to pay for such work that has not been so authorized.

4. OBLIGATIONS

- 4.1. Without affecting any of the obligations regarding the subject matter and the performance thereof, **Supplier** warrants that it will: (i) provide the Goods and Services at all times exercising due care, skill and judgment, in a proper workmanlike manner, and in accordance with the **Apex-Brasil's** specifications; (ii) provide the Goods and Services in the timeframes specified in the Agreement or as otherwise written specified by **Apex-Brasil**; (iii) ensure that all methods and procedures employed in performing the Services and supplying the Goods are ethical and are, where possible, best practice methods and procedures currently employed; (iv) ensure that only qualified and experienced personnel work on the provision of the Goods and Services; (v) provide the Goods and Services in accordance with all the **Apex-Brasil's** reasonable requirements and directions; (vi) prepare and submit to **Apex-Brasil** reports as are required by **Apex-Brasil**; (vii) ensure that in providing the Goods and Services all applicable laws and regulations are complied with; and (viii) ensure that no act or omission of the **Supplier** may prejudice or harm the interests and image of **Apex-Brasil**.
- 4.2. For a period of two (2) years from the termination of this contract, Supplier authorizes Apex-Brasil to access its commercial, fiscal, financial and exchange of foreign trade operations data with the Foreign Trade Office - SECEX, of the Ministry of Development, Industry and Foreign Trade - MDIC, which will be used for planning of Apex-Brazil trade promotion, as well as to consolidate information for studies and analyzes.

5. DELIVERY

- 5.1. The time of delivery and performance is of the essence of the **Agreement**. **Supplier** shall maintain a sufficient quantity of the necessary equipment, parts, materials, people and tools to avoid delays in the completion of its work.
- 5.2. **Apex-Brasil** may reject any Goods or Services not delivered or provided on or before the delivery date specified in the **Agreement** without prejudice to its rights against **Supplier**, whether for breach of contract or otherwise.
- 5.3. **Apex-Brasil** has a reasonable amount of time after receipt of Goods and Services and before payment to inspect them for conformity.
- 5.4. Any partial delivery or performance shall be deemed a failure by **Supplier** to deliver or perform in accordance with the **Agreement** unless expressly agreed in advance and in writing with Apex-Brasil.

6. GIFTS, GIFT FOODS, PROMOTIONAL ITEMS, UNSOLICITED ITEMS AND PERSONAL EFFECTS

- 6.1. **Supplier** shall not include any gifts, gift foods, promotional items (e.g., pens, t-shirts, souvenirs, posters, magazines, recorded music and movies), unsolicited items or any other personal effects inside the packages of any procured item.
- 6.2. Only items properly procured on the purchase and on the accepted **Proposal** shall be delivered to **Apex-Brasil**.

7. PRICES AND PAYMENT

- 7.1. Unless otherwise specified in the **RFP** and **Proposal**, **Supplier** must deliver the full quantity of Goods, or complete the Services to the satisfaction of **Apex-Brasil** before any payment will become due.
- 7.2. **Apex-Brasil** will pay each correct and undisputed invoice within 20 days after its receipt by **Apex-Brasil**.
- 7.3. If **Supplier** fails to supply the invoice with the information required in Clause 8 payment may be delayed.
- 7.4. Unless stated differently in the **RFP** and **Proposal**, the price includes all Services and Goods, deliverables, costs, expenses, taxes and duties.

8. INVOICES

- 8.1. Each invoice shall set forth the following information:
- Be in English or Spanish;
 - Location and name of Supplier;
 - Supplier's VAT number;
 - Invoice number, date and due date;
 - Apex-Brasil's** identification and location;
 - Goods or Services provided, including the quantities, unit price and amount;
 - VAT percentage and the amount charged, when applicable, as well as the local taxes levied;
 - Total amount of the Invoice; and
 - Bank transfer data.

9. CONFIDENTIALITY

- 9.1. **Supplier**, including its subcontractors and employees or agents, shall not (except as strictly necessary in the course of providing the Services or Goods) use or disclose, or allow to be used or disclosed, any Confidential Information of **Apex-Brasil** without the prior written consent of **Apex-Brasil** except: (i) to the extent necessary to comply with any law or regulation; (ii) to its auditors, legal advisers and other professional advisers provided that it uses its reasonable endeavors to procure that such persons maintain such confidentiality; and (iii) in order to enforce its rights under this Agreement.
- 9.2. **Supplier**, including its staff, shall view and process **Apex-Brasil** personal data only on a need-to-know basis and only to the extent necessary to perform this **Agreement** or **Apex-Brasil's** further written instructions.
- 9.3. **Supplier** shall not use the name, logo, trademark, or any other reference to **Apex-Brasil**, either direct or indirect, in press releases, advertisements, sales literature or other publications and shall not disclose the existence of the **Agreement**, without the prior written consent of **Apex-Brasil**.

10. INTELLECTUAL PROPERTY

- 10.1. To the extent that **Apex-Brasil** provides or makes available an intellectual property to **Supplier**, **Supplier** and its personnel will have a limited, personal, non-exclusive, non-transferable license to use such intellectual property solely for performing its obligations under this **Agreement** and for no other purpose whatsoever.
- 10.2. All inventions, information, drawings, know-how, specifications, designs, discoveries, software, developments and improvements made or conceived by **Supplier** in the performing of the Services, shall become and remain the sole exclusive property of **Apex-Brasil** excluding any intellectual property rights owned or developed by the **Supplier** before commencing providing the Services, respected the moral right of the author.
- 10.3. All right, title, and interest in and to all data and all copyrights in all deliverables, writings, documents, reports, papers, tabulations, and other works written or made by **Supplier** in the performing of the Services shall become and remain the sole exclusive property of **Apex-Brasil**. The **Supplier** hereby transfers and assigns all of its right, title and interest in and to all such data and intellectual property to **Apex-Brasil**, respected the moral right of the author.
- 10.4. **Supplier**, at its expense, is responsible to ensure all necessary things will be done to vest the ownership and full benefit of all such Intellectual Property Rights in **Apex-Brasil**.
- 10.5. Except for the purposes of this **Agreement**, **Supplier** is not permitted to do any of the following, whether directly or indirectly through another person or entity, without the prior written consent of Apex-Brasil: (i) reproduce or manufacture, whether for sample purposes or otherwise, any product in which the intellectual property rights belong to **Apex-Brasil**; (ii) reproduce, copy or display the image of any product in which the intellectual property rights belong to **Apex-Brasil**; or (iii) give away, deal with, or sell any product in which the intellectual property rights belong to **Apex-Brasil**.

- 10.6. **Supplier** warrants that the supply of the Goods and Services specified in this **Agreement** does not and will not infringe the intellectual property rights of every kind of any third party.
- 10.7. **Supplier** will indemnify, defend and hold harmless **Apex-Brasil** from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any Brazil or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design, or based on misappropriation or wrongful use of information or documents) and arising out of the **Supplier's** provision of the Services and/or sale or use of the Services by **Apex-Brasil**. **Apex-Brasil** will duly notify **Supplier** of any such claim, suit or action. **Supplier**, at its own expense, will fully defend such claim, suit or action on behalf of the indemnitees.

11. ANTICORRUPTION REPRESENTATIONS AND WARRANTIES

- 11.1. Each **Party** hereby undertakes that, at the date of the entering into force of the **Agreement**, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the **Agreement** and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence from doing so.
- 11.2. The **Supplier** hereby represents, on its own behalf and on behalf of its managers, officers, employees, agents, owners and shareholders that represent it, that it has knowledge of and fully agrees with the terms of the Apex-Brasil Code of Ethics that is available at www.apexbrasil.com.br. Failure to provide a copy of the mentioned document in any way shall not prejudice the fact that it should be observed by the **Supplier**.
- 11.3. For the purposes of this Section, the **Supplier** hereby represents and warrants that:
- it has not violated, is not violating, and nor will it violate the Brazilian anticorruption laws;
 - it is aware that is prohibited any activity that violates the anticorruption laws and it knows what the consequences are for such violations.

12. GENERAL WARRANTIES

- 12.1. **Supplier** represents and warrants that it will complete all Services in a professional, skillful manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, **Supplier** represents and warrants that the Services will be completed in accordance with applicable specifications and will be correct and appropriate for the purposes contemplated in the **Agreement**. **Supplier** represents and warrants that the performance of Services will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which **Supplier** is bound.
- 12.2. **Supplier** represents and warrants that all Goods delivered will be of good quality, free from defects in materials and workmanship, non-infringing of third-party intellectual property or other rights, and will conform to all applicable specifications. If **Apex-Brasil** identifies a warranty problem with the Goods during the warranty period, **Apex-Brasil** will promptly notify **Supplier** of such problems and will return the Goods to **Supplier**, at **Supplier's** expense. Within the time specified in the notification, **Supplier** shall, at **Apex-Brasil's** option, either (i) repair or replace such Goods, or (ii) provide a refund.
- 12.3. If insurances are requested by **Apex-Brasil** in its **RFP** or obligatory for the execution of the **Agreement**, **Supplier** must hold the insurance policies required.

13. INDEMNITY

- 13.1. **Supplier** will indemnify, hold harmless, and at **Apex-Brasil's** request, defend **Apex-Brasil**, its affiliates, officers, directors, customers, agents, and employees, against all claims, liabilities, damages, losses and expenses, including legal fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this **Agreement**, including, without

limitation: (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated cleanup costs; (ii) any claim (whether related to tax, employment rights or otherwise) that any individual engaged by **Supplier** in relation to this **Agreement** is deemed to be an employee of **Apex-Brasil**; (iii) any claim based on the negligence, omissions or wilful misconduct of **Supplier** or any **Supplier's** staff or sub-contractors; and (iv) any claim by a third party against **Apex-Brasil** alleging that the Services or Goods, the results of such Services, Work Product or any other Goods or processes provided under this **Agreement**, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other Goods, software or processes. **Supplier** cannot settle any such suit or claim without **Apex-Brasil's** prior written approval.

13.2. **Supplier** will pay or reimburse all costs that may be incurred by **Apex-Brasil** in enforcing this indemnity, including legal fees.

14. LIMITATION OF LIABILITY

14.1. **Supplier** is an independent contractor for all purposes. **Supplier** shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall **Supplier** or its agents, representatives or employees be deemed agents, representatives or employees of **Apex-Brasil**. **Supplier's** employees shall be paid exclusively by **Supplier** for all Services performed. **Supplier** shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.

14.2. In no event will **Apex-Brasil** be liable to **Supplier** or **Supplier's** employees or any third party for any incidental, indirect, special or consequential damages arising out of, or in connection with, this **Agreement**, whether or not **Apex-Brasil** was advised of the possibility of such damage.

14.3. **Apex-Brasil** and **Supplier** are independent contractors and nothing in this **Agreement** will be construed as establishing an employer/employee or other agency relationship, partnership or joint venture between them.

15. TERM

15.1. The TERM of this **Agreement** shall be determined according to the **RFP** and the accepted **Proposal**, and cannot exceed 60 (sixty) months.

16. RESCHEDULING/CANCELLATION

16.1. **Apex-Brasil** reserves the right to reschedule or cancel any delivery.

16.2. Occurring the rescheduling, the **Parties** shall agree, in writing, on a new work plan and payment schedule, if necessary.

16.3. In case of cancellation, the **Supplier** shall return the amount already paid by **Apex-Brasil**. The **Supplier** may deduct from this amount the expenses incurred by properly evidence.

16.3.1. If there is no amount paid by **Apex-Brasil** to the **Supplier**, **Apex-Brasil** might reimburse the **Supplier** for any evidenced and reasonable expenses incurred by.

17. REMEDIES AND LIQUIDATED DAMAGES

17.1. If **Supplier** breaches this **Agreement**, **Apex-Brasil** has all remedies available by law and at equity.

17.2. The total or partial breach of this **Agreement** shall subject **Supplier** to the following penalties: (i) termination of this **Agreement** by **Apex-Brasil**; (ii) suspension of the right to contract with **Apex-Brasil** and its offices around the world, during two (2) years.

17.3. If the breach results in losses or damages to **Apex-Brasil**, it will have the right to claim for reparation of the evidenced losses and damages.

18. NOTICES

- 18.1. All notices given pursuant to this **Agreement** must be in writing and will be properly served if delivered personally, posted, sent by facsimile or e-mailed to the other party at the address or facsimile number or email address set out in this **Agreement** or as otherwise notified in writing by the intended recipient.
- 18.2. A notice sent by post will be deemed to have been given on the ten (10) business day after posting. A notice sent by facsimile transmission will be deemed to have been given upon confirmation by the sending machine of successful transmission of the total number of pages of the notice. A Notice sent by e-mail will be deemed to have been given on confirmation that the email transmission has been received. A facsimile or email sent after 17h on a business day or on a day which is not a business day will be deemed received on the following business day.
- 18.3. The **Parties** have to inform each other about its new mail or e-mail address in writing immediately if any changes occur in the addresses. Otherwise, the notices made to the existing addresses stated herein shall be deemed valid.

19. FORCE MAJEURE

- 19.1. In the event of an interruption to the supply of Goods or provision of Services to **Apex-Brasil** that **Supplier** attributes to Force Majeure, **Supplier** must notify **Apex-Brasil** immediately of the circumstances, likely duration and impact on the supply of Goods or provision of Services.
- 19.2. **Apex-Brasil's** obligations to make any payments under this **Agreement** are deferred to the extent that an event of Force Majeure prevents **Supplier** from supplying Goods or providing Services under this **Agreement** for the period of the event of Force Majeure.
- 19.3. **Apex-Brasil** may elect at any time to terminate the **Agreement** by written notice to **Supplier** if an event of Force Majeure persists for twenty (20) days or more.

20. DISPUTE RESOLUTION

- 20.1. Before filing any action in law or in equity, the **Parties** shall first attempt, for at least thirty (30) days, to resolve any dispute promptly by good faith negotiation between executives who have authority to solve it and who are at a higher level of management than the person directly responsible for administration of this **Agreement**.
- 20.2. Any dispute that arises under or is related to this **Agreement** that cannot be settled according Clause 20.1 may be decided by the court of the **Supplier's** head office jurisdiction.
- 20.3. Pending final resolution of any dispute, **Supplier** shall proceed with performance of this **Agreement** according to **Apex-Brasil's** written instructions so long as **Apex-Brasil** continues to pay amounts not in dispute.

21. MISCELLANEOUS

- 21.1. **No Waiver.** No delay or omission on the part of either party in requiring performance by the other party of its obligations will operate as a waiver of any rights.
- 21.2. **Representantion.** Each Party represents and warrants to the other that it has full power and authority to enter into and perform this **Agreement**, and that the person signing this **Agreement** on behalf of each Party has been properly authorized and empowered to enter into it.
- 21.3. **Severability.** If any provision of this **Agreement** is held by a court of competent jurisdiction to be unenforceable, invalid or illegal, it will be severed and the remainder of this **Agreement** will remain in full force and effect, and the Parties will substitute for the invalid or unenforceable provision a valid and enforceable provision which conforms as nearly as possible with the original intent of the Parties.
- 21.4. **Third-Party Beneficiaries.** This Agreement is not intended to, and the Parties agree that it does not, bestow any benefit or right upon any third party.
- 21.5. **Use of Names.** Both Parties agree not to use or refer to, without the other Party's prior written permission, the existence or contents of this Agreement or the name of the other or any of its affiliates or parent corporations in any public statements, whether oral or written, unless such disclosures are required by law or regulation.

- 21.6. **Independent Contractor.** Nothing contained in this Agreement shall be deemed to constitute a partnership between Apex-Brasil and Supplier, or to constitute one as the agent of the other. Both Parties shall act solely as independent contractors, and nothing in this Agreement shall be construed to give either Party the power or authority to act for, bind, or commit the other Party.
- 21.7. **Headings.** Headings in this Agreement are included for ease of reference only and are not to have any legal effect or otherwise be used in connection with the construction of any provision of this Agreement.
- 21.8. **Entire Agreement.** This Agreement sets forth the entire Agreement and understanding of the Parties as to the subject matter hereof and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way. This Agreement may be amended only by a written document signed by authorized representatives of both Parties.
- 21.9. **Export Control.** Supplier hereby acknowledges and agrees that the Products, documents, technical data and any other materials delivered under this Agreement may be subject to applicable export control and trade sanctions laws, regulations, legislative and regulatory requirements, rules and licenses in force in the country in which services will be held.

22. GOVERNING LAW AND VENUE

- 22.1. This Agreement, and the interpretation, construction and enforceability hereof, and all rights and obligations of the parties, whether arising under this **Agreement** or otherwise, shall be governed by and construed in accordance with the laws of Brazil, without giving effect to any principles of conflict of laws.
